

REMARKS

In the Office Action mailed September 14, 2005, the Examiner provisionally rejected claims 41-90 under the judicially created doctrine of obviousness-type double patenting in view of co-pending application no. 09/806,279; rejected claims 41, 43, 51-55, 56, 58, 66-70, 71-76, 88, and 78-90 under 35 U.S.C. § 102(b) as being anticipated by *Moses et al.* (U.S. Patent No. 4,425,642); rejected claims 42, 57, and 77 under 35 U.S.C. § 103(a) as being unpatentable over *Moses et al.* in view of *Honda et al.* (U.S. 5,657,379); rejected claims 44, 59, and 79 under 35 U.S.C. § 103(a) as being unpatentable over *Moses et al.* in view of *Tsumura et al.* (U.S. Patent No. 5,365,576); rejected claim 45, 60, and 80 under 35 U.S.C. 103(a) as being unpatentable over *Moses et al.* in view of *Crespo et al.* (U.S. Patent No. 5,177,768); rejected claims 46, 61, and 81 under 35 U.S.C. § 103(a) as being unpatentable over *Moses et al.* in view of *Jensen et al.* (U.S. Patent No. 5,764,763); rejected claims 47, 62, and 82 under 35 U.S.C. 103(a) as being unpatentable over *Moses et al.* in view of *Decker et al.* (U.S. Patent No. 4,757,495); and indicated claims 48-50, 63-65, and 83-85 would be allowed if rewritten in independent form.

By this Amendment, Applicant amends claims 41, 49, 56, 64, 71, 72, 74, 76, and 84 and cancels claims 47, 48, 50, 62, 63, 65, 82, 83, and 85 without prejudice or disclaimer. Claims 41-46, 49, 51-61, 64, 66-81, 84, and 86-90 remain pending. For the reasons discussed below, Applicant respectfully traverses the double patenting rejection and the rejections under 35 U.S.C. §§ 102 and 103.

I. Double Patenting Rejections

The Examiner provisionally rejects claims 41-90 under the judicially created doctrine of obviousness-type double patenting over claims 1-40 of U.S. Patent Application no. 09/806,279

("the '279 application"). Although Applicant respectfully disagrees with the Examiner's position, Applicant submits herewith a Terminal Disclaimer disclaiming the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §§ 154 to 156 and 173, as presently shortened by any terminal disclaimer, of any patent granted on the '279 application.

Accordingly, Applicant requests the double patenting rejection be withdrawn.

II. The Rejections Under 35 U.S.C. § 102

Applicant respectfully traverses the rejection of claims 41, 43, 51-55, 56, 58, 66-70, 71-76, 78, and 86-90 under 35 U.S.C. § 102(b) in view of *Moses et al.* for the following reasons.

Applicant has amended claim 41 to include the recitations of canceled claims 47, 48, and 50. As noted above, the Examiner indicated claims 48 and 50 are allowable over the cited art (OA at 10, ¶ 9). Therefore, the cited art does not support the rejection of amended claim 41 as asserted by the Examiner. Accordingly, Applicant requests the rejection of claim 41 be withdrawn and the claim allowed.

Claims 43 and 51-55 depend directly or indirectly from amended claim 41. As explained, the cited art does support the rejection of amended claim 41. Accordingly, the cited art also does not support the rejection of claims 43 and 51-55 for at least the same reasons set forth for amended claim 41. Applicant therefore requests the rejection of these claims be withdrawn and the claims allowed.

Applicant has also amended claim 56 to include the recitations of canceled claims 62, 63, and 65. As noted above, the Examiner indicated claims 63 and 65 are allowable over the cited art (OA at 10, ¶ 9). Therefore, the cited art does not support the rejection of amended claim 56

as asserted by the Examiner. Accordingly, Applicant requests the rejection of amended claim 56 be withdrawn and the claim allowed.

Claims 58 and 66-70 depend from amended claim 56. As explained, the cited art does support the rejection of amended claim 56. Accordingly, the cited art also does not support the rejection of claims 58 and 66-70 for at least the same reasons set forth for amended claim 56. Applicant therefore requests the rejection of these claims be withdrawn and the claims allowed.

The Examiner asserts *Moses et al.* teaches the recitations of claim 71. (OA at 4.) Applicant respectfully disagrees. Although *Moses et al.* discloses a system that enables digital data signals to be simultaneously transmitted with voice signals, the system of *Moses et al.* does not teach at least a executing a program included in a data message that has been decoded from the transmitted data signals, as asserted by the Examiner. Instead, *Moses et al.* states the digital data transmitted “can be a fire alarm, an intrusion alarm, or any other digital data signal.” (5:33-34.) This is not indicative of a program that is included in a data message formed from decoded signals transmitted over the communications channel, as recited in claim 71. Accordingly, the cited art does not support the rejection of claim 71, as asserted by the Examiner, and thus Applicant requests the rejection of this claim be withdrawn and the claim allowed.

The Examiner also asserts *Moses et al.* teaches the recitations of claim 72. (OA at 4.) Applicant disagrees. Contrary to the Examiner’s allegations, *Moses et al.* does not teach receiving the data message transmitted from the remote device over the communication channel as a sequence of basic signals during a sequence of fixed time periods. Instead, *Moses et al.* discloses a system that connects a data signal to a pair of CMOS switches to transmit sets of frequencies based on whether a given data level of the data signal is a “0” or “1.” (5:33-45.)

Thus, *Moses et al.* does not show a data message that is transmitted as a sequence of basic signals, as recited in claim 72. Accordingly, the cited art does not support the rejection of this claim and Applicant therefore requests that the rejection be withdrawn and the claims allowed.

Claim 73 depends from claim 72. As explained, the cited art does support the rejection of claim 72. Accordingly, the cited art also does not support the rejection of claim 73 for at least the same reasons set forth for claim 72. Applicant therefore requests the rejection of this claim be withdrawn and the claim allowed.

The Examiner also asserts *Moses et al.* teaches the recitations of claim 74. (OA at 4-5.) Applicant has amended claim 74 to include recitations similar to those recited in claim 45. Accordingly, Applicant responds to the rejection of claim 45 in this response regarding claim 74. In rejecting claim 45, the Examiner admits *Moses et al.* fails to disclose determining frequency characteristics of a communication channel and each basic signal including an amplitude based on the determined channel's frequency characteristics. The Examiner, however, asserts *Crespo et al.* teaches these features. (OA at 8.) Applicant disagrees with the Examiner's interpretation of *Crespo et al.* Contrary to the Examiner's assertions, having a filter that produces a transmitted time signal as an output of the filter and having an impulse response characteristic determined from the frequency domain characteristic of the channel for maximizing a signal-to-interference ratio, as recited in col. 8, lines 31-50 (cited by the Examiner), does not show or suggest basic signals having an amplitude that is based on a determined frequency characteristic of the communication channel, as recited in claim 74. Accordingly, the cited art does not support the rejection of claim 74, as amended, and thus, Applicant requests the rejection of this claim be withdrawn and the claim allowed.

Claim 75 depends from claim 74. As explained, the cited art does support the rejection of claim 74. Accordingly, the cited art also does not support the rejection of claim 75 for at least the same reasons set forth for claim 74. Applicant therefore requests the rejection of this claim be withdrawn and the claim allowed.

Applicant has amended claim 76 to include the recitations of canceled claims 82, 83, and 85. As noted above, the Examiner indicated claims 83 and 85 are allowable over the cited art (OA at 10, ¶ 9). Therefore, the cited art does not support the rejection of claim 76 as asserted by the Examiner. Accordingly, Applicant requests the rejection of claim 76 be withdrawn and the claim allowed.

Claims 78 and 86-90 depend from claim 76. As explained, the cited art does support the rejection of claim 76. Accordingly, the cited art also does not support the rejection of claims 78 and 86-90 for at least the same reasons set forth for claim 76. Applicant therefore requests the rejection of these claims be withdrawn and the claims allowed.

III. The Rejections Under 35 U.S.C. § 103(a)

Applicant respectfully traverses the rejection of claims 42, 44, 45, 46, 57, 59, 60, 61, 77, 79, 80, and 81 under 35 U.S.C. § 103(a). To establish a prima facie case of obviousness under 35 U.S.C. § 103(a), three basic criteria must be met. First, the prior art reference or references, taken alone or combined, must teach or suggest each and every element recited in the claims. *See* M.P.E.P. § 2143.03. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references in a manner resulting in the claimed invention. *See* M.P.E.P. § 2143. Third, a reasonable expectation of success must exist. *See* M.P.E.P. § 2143.02. Moreover, each

of these requirements must "be found in the prior art, and not based on applicant's disclosure."

See M.P.E.P. § 2143.

Claims 42, 44-46 depend from amended claim 41, claims 57, 59-61 depend from amended claim 56, and claims 77, 79-81 depend from claim 76. As explained, the cited art does support the rejection of claims 41, 56, and 76. Accordingly, the cited art also does not support the rejection of claims 42, 44, 45, 46, 57, 59, 60, 61, 77, 79, 80, and 81 for at least the same reasons set forth above in connection with claims 41, 56, and 76. Applicant therefore requests the rejection of claims 42, 44, 45, 46, 57, 59, 60, 61, 77, 79, 80, and 81 be withdrawn and the claims allowed.

IV. Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 13, 2005

By: 

Joseph E. Palys
Reg. No. 46,508